ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

1998 Biennial Regulatory Review –
Petition for Section 11 Biennial Review
filed by SBC Communications, Inc.,
Southwestern Bell Telephone Company,
Pacific Bell, and Nevada Bell

CC Docket No. 98-177

REPLY COMMENTS OF BELL ATLANTIC[1]

The commenters who oppose SBC's biennial review proposals raise a number of irrelevant arguments in an attempt to persuade the Commission to avoid its statutory duty to eliminate all unnecessary regulations. Their arguments that the Commission should retain unnecessary regulations for a particular service so long as carriers have not yet demonstrated that other statutory provisions have been fully implemented, or so long as the local exchange carriers have a dominant share of the market for other services, fundamentally misrepresent the statutory standard and must be disregarded. SBC's streamlining proposals are consistent with Section 11, and should be adopted.

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

I. The Commission Has A Statutory Obligation To Act On SBC's Biennial Review Proposals.

MCI/Worldcom argues that biennial review petitions such as SBC's should be ignored in favor of "more pressing regulatory tasks." MCI/ Worldcom at 2. Other commenters argue that the Commission should not eliminate the regulations cited by SBC until the local exchange carriers have demonstrated that they have implemented other provisions of the Act, such as the "checklist" requirements of Section 271 for entry into long distance. ***See, e.g.,*** Logix at 3-4; Hyperion at 4-5; TRA at 9. These arguments have no merit.

Regulatory reform is no longer an option, it is a requirement of the Act. Section 11 is a key component of the "pro-competitive, de-regulatory national policy framework" adopted in the Telecommunications Act of 1996. ***See*** Joint Explanatory Statement at 113, 185. This section is not discretionary – it states, in clear and unambiguous terms, that the Commission "shall review all regulations" every two years and "shall repeal or modify any regulation" that is no longer in the public interest. 47 U.S.C. Section 161 (emphasis added). The Act does not allow the Commission to subordinate biennial review to other regulatory tasks.[2]

The Act also does not permit the Commission to avoid eliminating unnecessary regulations simply because it thinks *other* regulations are still needed, or because carriers have not yet demonstrated that *other* provisions of the Act have been implemented.

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[2] SBC presented its biennial review proposals on a timely basis. It filed its petition on May 8, 1998, over six months before the petition was placed on public notice.

Section 11 establishes a simple and unambiguous standard for elimination or modification of an existing regulation – whether the particular regulation "is no longer necessary in the public interest." 47 U.S.C. Section 161(a)(2). It does not permit the Commission to make compliance with other statutory requirements – such as the checklist requirements of section 271 – a prerequisite for elimination of an unnecessary regulation. By its explicit terms, the checklist items in Section 271 are a prerequisite only for in-region long distance authority. ***See*** 47 U.S.C. Section 271(d)(3). They are not requirements for out-of-region or incidental long distance authority, and they clearly do not apply to the Commission's biennial review responsibilities.

For these reasons, the Commission has an obligation to review SBC's proposals on their merits, and to eliminate any regulations that can no longer be justified.

II. There Is No Longer Any Need For Price Regulation Of The Local Exchange Carriers' Special Access Services, Direct Trunked Transport, Operator Services, Directory Assistance, Or Interexchange Services.

Several commenters oppose SBC's efforts to detariff certain services, claiming that the local exchange carriers continue to have an overwhelming share of the market. ***See*** AT&T at 5-6; TRA at 5; GST at 5. They argue that the local exchange carriers have 97 percent of the local exchange market, that competitive local exchange carriers serve less than 3 percent of access lines, and that the interexchange carriers continue to spend 86 cents of every access dollar on services provided by the incumbent local exchange carriers. However, these statistics, even taken at face value, are completely irrelevant. They represent primarily revenues and traffic from usage-based switched access services,

which SBC does not seek to deregulate.[3] Rather, SBC seeks to eliminate pricing regulation for the local exchange carriers' special access services, direct trunked transport, operator services, directory assistance, and interexchange services. In these markets, it is undeniable that customers have numerous competitive alternatives, and that the local exchange carriers cannot exercise market power.

For instance, Bell Atlantic recently filed a forbearance petition showing that regulation of its special access services is no longer necessary due to the extensive market penetration of competitive access providers. ***See*** Petition of Bell Atlantic for Forbearance (filed Jan. 20, 1999) at 10. Through collocation and through their own fiber facilities, competitive providers of special access and direct trunked transport services are in a position to serve approximately 90 percent of Bell Atlantic's customers.[4]

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[3] Similarly, the commenters cite statistics from the Commission's recent Local Competition Report to support their claim that competitive local exchange carriers have only gained 14 percent of the market for special access services. ***See, e.g.,*** KMC at 3-4. However, those data are irrelevant, as they include state private line services and say nothing about the capacity of competitive networks. The Commission's report did note that competitive local exchange carriers had placed collocated facilities in switching centers that serve 57 percent of the incumbent local exchange carriers' lines, and that they had tripled their amount of fiber from 1995 to 1997, far exceeding the growth rate of the incumbent local exchange carriers. Local Competition Report (rel. Dec. 4, 1998) at 6, 8.

[4] ***See*** id. at 1, 6. The ability of competitive providers to address the special access and transport market is aided by the high concentration of demand in small geographic areas – approximately 93 percent of Bell Atlantic's demand for these services is located in only 20 percent of Bell Atlantic's central offices. ***See*** id. at Attachment B, p. 4.

The commenters hardly mention the markets for operator services and directory assistance, where hundreds of new competitors are already providing service.[5] And it is incontestable that in the narrow markets where the local exchange carriers are allowed to provide interstate interexchange service, they face an overwhelming number of competitors with nationwide presence and far greater marketing power. ***See, e.g.,*** Petition to Regulate Bell Atlantic as a Nondominant Provider of Interstate InterLATA Corridor Service, DA 95-1666 (filed July 7, 1995) at 2, 4-5 (noting that there are approximately 90 interexchange providers in Bell Atlantic's two interstate "corridor" routes).

The record is clear that continued regulation of these markets is no longer necessary, as any effort by the local exchange carriers to exercise market power by increasing rates or reducing output would only encourage customers to switch to one of the many alternatives available to them.

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[5] ***See*** Comments of the United States Telephone Association, CC Docket No. 96-262 (filed Jan. 29, 1997) at 41-42 (noting that there were 350 competitive providers of operator services in 1995). MCI disputes the competitiveness of the directory assistance market, but its arguments, coming from a nationally advertised provider of directory listings, lack credibility. ***See*** MCI/ Worldcom at 8. There are numerous alternative providers of both wholesale and retail directory services, including the major interexchange carriers and listings available directly from the Internet. ***See*** USTA Comments, *supra* at 46-48. MCI concedes that it can and does purchase directory listings from third parties, but it claims that these sources are less reliable and more expensive than listings from the local exchange carriers. MCI does not explain why it goes elsewhere if the local exchange carriers offer better service at a lower price, but its ability and desire to do so testify to the competitiveness of this market.

III. The Commission Should Streamline Its Rules For Calculating Cash Working Capital.

AT&T is incorrect in arguing that the Commission's current rules concerning calculation of cash working capital are not burdensome. AT&T at 3-4. It can take up to a year to conduct a full lead-lag study (***see*** Ameritech at 3; BellSouth at 3), and the alternative methodology provided in Section 65.820(e) of the Commission's rules can take several months as well. While the burden of these studies is clearly disproportionate to the impact on the rate base, the solution is not to require the local exchange carriers to forego recovery of their return on cash working capital if they do not perform such studies. ***See*** MCI/ Worldcom at 4-5. This is a real cost, which the carriers are entitled to recover, regardless of its size. The Commission should either allow the carriers to freeze their current cash working capital requirements, or it should allow a simplified approach, such as 1/8 of overall operating expenses. More broadly, the Commission should make this issue moot by allowing the carriers to follow generally accepted accounting principles, rather than the Commission's uniform system of accounts and associated rules, to calculate all of their costs.

IV. The Commission Should Eliminate The "Trigger" For Conducting A Rate Of Return Represcription For Price Cap Carriers.

The commenters who oppose SBC's request to eliminate the "trigger" for conducting an investigation into the authorized rate of return miss the point. They argue that a prescribed rate of return performs many functions, even for price cap carriers. ***See, e.g.,*** AT&T at 2-3; MCI/ Worldcom at 3. However, SBC did not request that the

Commission eliminate its rules prescribing the rate of return for price cap carriers. Rather, SBC simply sought to eliminate the rule that automatically requires a represcription proceeding whenever there is a 150 basis point change in the interest rate for 10 year United States Treasury securities. ***See*** SBC Petition at 10, citing 47 C.F.R. Section 65.101.

The current trigger, which relies entirely upon a change in the cost of debt, ignores the fact that a reduction in the cost of debt could be accompanied by an increase in the cost of equity. ***See*** Comments of Bell Atlantic, CC Docket No. 98-166 (filed Jan. 19, 1999) at 9-10. The Telecommunications Act of 1996 subjected the local exchange carriers to an increased level of competition, which increased their market risk and the associated return that is demanded by investors. ***See*** id., Affidavit of James H. Vander Weide at 3, 11-18. In this new market environment, a change in the cost of debt does not automatically produce a change in the overall cost of raising capital.

Moreover, the commenters greatly exaggerate the role that the authorized rate of return plays in price cap regulation. For price cap carriers, the authorized rate of return does not determine overall revenues, or even specific rate levels. For instance, while the rate of return may be used in justifying rates for new services, the price cap system allows the carriers to vary those rates in subsequent filings so long as prices remain within service band limits. Most exogenous cost adjustments are based on specific cost changes, such as changes in universal service contributions and regulatory fees. In the recent access reform proceeding, the Commission decided that major shifts in costs due to changes in the access structure should be performed using revenues, rather than costs.

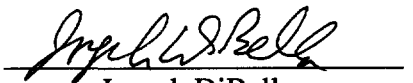
See Tariffs Implementing Access Charge Reform, 13 FCC Rcd 14683, ¶¶ 83, 88 (1998). And the use of the rate of return for such purposes as low end adjustments and above-cap filings is a rare occurrence. The limited use of rate of return under price caps makes it unnecessary to conduct a represcription proceeding every time the current "trigger" occurs.

For these reasons, the Commission should eliminate the automatic "trigger," and give itself flexibility to determine when changes in the capital markets warrant an inquiry into the authorized rate of return.

V. Conclusion

The Commission should carry out the Act's deregulatory mandate by eliminating the rules identified in SBC's petition.

Respectfully submitted,



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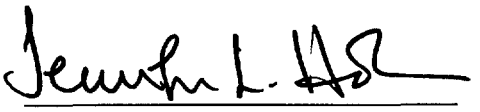
Dated: January 25, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 1999, an original and 4 copies of the foregoing "Reply Comments of Bell Atlantic" was served upon the Secretary and a copy was sent by first class mail, postage prepaid, to the parties on the attached list.



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